



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0617/P3  
PJK&TJD:jld:ph

stays

DOA:.....Iwata, BB0260 – Estate recovery for Medical Assistance

**FOR 2013-2015 BUDGET – NOT READY FOR INTRODUCTION**

D-note  
(out today, please)

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1

AN ACT *x*; relating to; the budget. ✓

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**MEDICAL ASSISTANCE**

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2           **SECTION 1.** 20.435 (4) (im) of the statutes is amended to read:

3           20.435 (4) (im) *Medical assistance; correct payment recovery; collections; other*  
4 *recoveries.* All moneys received from the recovery of correct medical assistance  
5 payments under ss. 49.496 and 867.035 and rules promulgated under s. 46.286 (7),  
6 49.848, and 49.849, all moneys received as collections and other recoveries from

1 providers, drug manufacturers, and other 3rd parties under medical assistance  
2 performance-based contracts, and all moneys credited to this appropriation account  
3 under s. 49.89 (7) (f), for payments to counties and tribal governing bodies under s.  
4 49.496 (4) (a), for payment of claims under s. ~~867.035 (3)~~ 49.849 (5), for payments to  
5 the federal government for its share of medical assistance benefits recovered, for the  
6 state share of medical assistance benefits provided under subch. IV of ch. 49, and for  
7 costs related to collections and other recoveries.

8 **SECTION 2.** 20.435 (4) (in) of the statutes is amended to read:

9 20.435 (4) (in) *Community options program; family care; recovery of costs*  
10 *administration.* From the moneys received from the recovery of costs of care under  
11 ss. 46.27 (7g) and ~~867.035 and under rules promulgated under s. 46.286 (7), 49.848,~~  
12 ~~and 49.849~~ for enrollees who are ineligible for medical assistance, the amounts in the  
13 schedule for administration of the recovery of costs of the care.

14 **SECTION 3.** 20.435 (7) (im) of the statutes is amended to read:

15 20.435 (7) (im) *Community options program; family care benefit; recovery of*  
16 *costs; birth to 3 waiver administration.* From the moneys received from the recovery  
17 of costs of care under ss. 46.27 (7g) and ~~867.035 and under rules promulgated under~~  
18 ~~s. 46.286 (7), 49.848, and 49.849~~ for enrollees who are ineligible for medical  
19 assistance, all moneys not appropriated under sub. (4) (in), and all moneys  
20 transferred to this appropriation account from the appropriation account under sub.  
21 (4) (o), for payments to county departments and aging units under s. 46.27 (7g) (d),  
22 payments to care management organizations for provision of the family care benefit  
23 under s. 46.284 (5), payment of claims under s. ~~867.035 (3)~~ 49.849 (5), payments for  
24 long-term community support services funded under s. 46.27 (7) as provided in ss.

1 46.27 (7g) (e) and ~~867.035 (4m)~~ 49.849 (6) (b), and for administration of the waiver  
2 program under s. 46.99.

3 **SECTION 4.** 46.27 (7g) (a) 1m. of the statutes is created to read:

4 46.27 (7g) (a) 1m. "Decedent" means a deceased client or a deceased nonclient  
5 surviving spouse, whichever is applicable.

6 **SECTION 5.** 46.27 (7g) (a) 4. of the statutes is created to read:

7 46.27 (7g) (a) 4. "Nonclient surviving spouse" means any person who was  
8 married to a client while the client was receiving services for which the cost may be  
9 recovered under par. (c) 1. and who survived the client.

10 **SECTION 6.** 46.27 (7g) (a) 5. of the statutes is created to read:

11 46.27 (7g) (a) 5. a. "Property of a decedent" means all real and personal  
12 property to which the client held any legal title or in which the client had any legal  
13 interest immediately before death, to the extent of that title or interest, including  
14 assets transferred to a survivor, heir, or assignee through joint tenancy, tenancy in  
15 common, survivorship, life estate, living trust, or any other arrangement.

16 b. Notwithstanding subd. 5. a., "property of a decedent" includes any real  
17 property in which the nonclient surviving spouse had an ownership interest  
18 immediately before <sup>at</sup> the client's death and in which the client had a marital property  
19 interest with that nonclient surviving spouse at any time within 5 years before the  
20 client applied for long-term community support services funded under sub. (7) or  
21 during the time that the client was eligible for long-term community support  
22 services funded under sub. (7).

23 **SECTION 7.** 46.27 (7g) (c) 1. of the statutes is amended to read:

24 46.27 (7g) (c) 1. Except as provided in subd. 4., the department shall file a claim  
25 against the estate of a client ~~or, and~~ against the estate of ~~the~~ a nonclient surviving

1 spouse of a client, for the amount of long-term community support services funded  
2 under sub. (7) paid on behalf of the client after the client attained 55 years of age,  
3 unless already recovered by the department under this subsection.

4 **SECTION 8.** 46.27 (7g) (c) 2m. of the statutes is created to read:

5 46.27 (7g) (c) 2m. a. Property that is subject to the department's claim under  
6 subd. 1. in the estate of a client or in the estate of a nonclient surviving spouse is all  
7 property of a decedent that is included in the estate.

8 b. There is a presumption, which may be rebutted by clear and convincing  
9 evidence, that all property in the estate of the nonclient surviving spouse was marital  
10 property held with the client and that 100 percent of the property in the estate of the  
11 nonclient surviving spouse is subject to the department's claim under subd. 1.

12 **SECTION 9.** 46.27 (7g) (c) 3. (intro.) of the statutes is amended to read:

13 46.27 (7g) (c) 3. (intro.) The court shall reduce the amount of a claim under  
14 subd. 1. by up to the amount specified in s. 861.33 (2) if necessary to allow the client's  
15 decedent's heirs or the beneficiaries of the client's decedent's will to retain the  
16 following personal property:

17 **SECTION 10.** 46.27 (7g) (c) 5. a. of the statutes is amended to read:

18 46.27 (7g) (c) 5. a. If the department's claim is not allowable because of subd.  
19 4. and the estate includes an interest in real property, including a home, the court  
20 exercising probate jurisdiction shall, in the final judgment or summary findings and  
21 order, assign the interest in the ~~home~~ real property subject to a lien in favor of the  
22 department for the amount described in subd. 1. The personal representative or  
23 petitioner for summary settlement or summary assignment of the estate shall record  
24 the final judgment as provided in s. 863.29, 867.01 (3) (h), or 867.02 (2) (h).

25 **SECTION 11.** 46.27 (7g) (c) 5. b. of the statutes is amended to read:

1           46.27 (7g) (c) 5. b. If the department's claim is not allowable because of subd.  
2           4., the estate includes an interest in real property, including a home, and the personal  
3           representative closes the estate by sworn statement under s. 865.16, the personal  
4           representative shall stipulate in the statement that the ~~home~~ real property is  
5           assigned subject to a lien in favor of the department for the amount described in subd.  
6           1. The personal representative shall record the statement in the same manner as  
7           described in s. 863.29, as if the statement were a final judgment.

8           **SECTION 12.** 46.27 (7g) (c) 6. (intro.) of the statutes is amended to read:

9           46.27 (7g) (c) 6. (intro.) The department may not enforce ~~the~~ a lien under subd.  
10          5. as long as any of the following survive the decedent:

11          **SECTION 13.** 46.27 (7g) (f) 2. of the statutes is amended to read:

12          46.27 (7g) (f) 2. The department may ~~file~~ a claim under par. (c) only with respect  
13          to a client who dies after ~~February 15, 1996~~ the date that is 90 days after the effective  
14          date of this subdivision ... [LRB inserts date].

15          **SECTION 14.** 46.27 (7g) (g) of the statutes is amended to read:

16          46.27 (7g) (g) The department shall promulgate rules establishing standards  
17          for determining whether the application of this subsection would work an undue  
18          hardship in individual cases. If the department determines that the application of  
19          this subsection would work an undue hardship in a particular case, the department  
20          shall waive application of this subsection in that case. This paragraph does not apply  
21          with respect to claims against the estates of nonclient surviving spouses.

22          **SECTION 15.** 46.286 (7) of the statutes is amended to read:

23          46.286 (7) ~~RECOVERY OF FAMILY CARE BENEFIT PAYMENTS; RULES.~~ The department  
24          shall ~~promulgate rules relating~~ apply to the recovery from persons who receive the  
25          family care benefit, including by liens and affidavits and from estates, of correctly

1 ~~and incorrectly~~ paid family care benefits, ~~that are substantially similar to the~~  
2 applicable provisions under ss. 49.496 and ~~49.497, 49.848, and 49.849.~~

3 **SECTION 16.** 46.287 (2) (a) 1. k. of the statutes is amended to read:

4 46.287 (2) (a) 1. k. Recovery of family care benefit payments ~~under s. 46.286~~  
5 ~~(7).~~

6 **SECTION 17.** 49.496 (1) (a) of the statutes is renumbered 49.496 (1) (ah).

7 **SECTION 18.** 49.496 (1) (af) of the statutes is created to read:

8 49.496 (1) (af) "Decedent" means a deceased recipient or a deceased  
9 nonrecipient surviving spouse, whichever is ~~appropriate~~ *applicable*.

10 **SECTION 19.** 49.496 (1) (bk) of the statutes is created to read:

11 49.496 (1) (bk) "Long-term care program" means any of the following:

12 1. The family care program providing the benefit under s. 46.286.

13 2. The self-directed services option that operates under a waiver from the  
14 secretary of the federal department of health and human services under 42 USC  
15 1396n (c) in which an enrolled individual selects his or her own services and service  
16 providers.

17 3. The family care partnership program that is an integrated health and  
18 long-term care program operated under an amendment to the state medical  
19 assistance plan under 42 USC 1396u-2 and a waiver under 42 USC 1396n (c).

20 4. The program for all-inclusive care for the elderly under 42 USC 1396u-4.

21 5. Any program that provides long-term care services and is operated by the  
22 department under an amendment to the state medical assistance plan under 42 USC  
23 1396n (i) or 42 USC 1396u-2; a waiver of medical assistance laws under 42 USC  
24 1396n (c), 42 USC 1396n (b) and (c), or 42 USC 1396u; or a demonstration project  
25 under 42 USC 1315 or 42 USC 1396n (c).

1           **SECTION 20.** 49.496 (1) (bw) of the statutes is created to read:

2           49.496 (1) (bw) “Nonrecipient surviving spouse” means any person who was  
3           married to a recipient while the recipient was receiving services for which the cost  
4           may be recovered under sub. (3) (a) and who survived the recipient.

5           **SECTION 21.** 49.496 (1) (cm) of the statutes is created to read:

6           49.496 (1) (cm) 1. “Property of a decedent” means all real and personal property  
7           to which the recipient held any legal title or in which the recipient had any legal  
8           interest immediately before death, to the extent of that title or interest, including  
9           assets transferred to a survivor, heir, or assignee through joint tenancy, tenancy in  
10          common, survivorship, life estate, living trust, or any other arrangement.

11          2. Notwithstanding subd. 1., “property of a decedent” includes any real  
12          property in which the nonrecipient surviving spouse had an ownership interest  
13          ~~immediately before~~<sup>at</sup> the recipient's death<sup>✓</sup> and in which the recipient had a marital  
14          property interest with that nonrecipient surviving spouse at any time within 5 years  
15          before the recipient applied for medical assistance or during the time that the  
16          recipient was eligible for medical assistance.

17          **SECTION 22.** 49.496 (3) (a) (intro.) of the statutes is amended to read:

18          49.496 (3) (a) (intro.) Except as provided in par. (b), the department shall file  
19          a claim against the estate of a recipient, and against the estate of a nonrecipient  
20          surviving spouse, for all of the following, subject to the exclusion of any amounts  
21          under the Long-Term Care Partnership Program established under s. 49.45 (31),  
22          unless already recovered by the department under this section:

23          **SECTION 23.** 49.496 (3) (a) 2. a. of the statutes is amended to read:

1 49.496 (3) (a) 2. a. Home-based or community-based services under 42 USC  
2 1396d (a) (7) and (8) ~~and under any waiver granted under 42 USC 1396n (c) (4) (B)~~  
3 ~~or 42 USC 1396u.~~

4 SECTION 24. 49.496 (3) (a) 2. am. of the statutes is created to read:

5 49.496 (3) (a) 2. am. All services provided to an individual while the individual  
6 is participating in a long-term care program.

7 SECTION 25. 49.496 (3) (a) 2. b. of the statutes is repealed.

8 SECTION 26. 49.496 (3) (a) 2. c. of the statutes is repealed.

9 SECTION 27. 49.496 (3) (ad) of the statutes is created to read:

10 49.496 (3) (ad) The amount the department may claim against an estate of a  
11 *✓ or an estate of a nonrecipient surviving spouse, ✓*  
recipient for services that are described under par. (a) 2. am. and that are provided  
12 by a managed long-term care program funded by capitated payments is equal to the  
13 *the ✓*  
amount of the capitated payment for ~~that~~ recipient. ✓

14 SECTION 28. 49.496 (3) (aj) of the statutes is created to read:

15 49.496 (3) (aj) 1. Property that is subject to the department's claim under par.  
16 (a) in the estate of a recipient or in the estate of a nonrecipient surviving spouse is  
17 all property of a decedent that is included in the estate.

18 2. There is a presumption, which may be rebutted by clear and convincing  
19 evidence, that all property in the estate of a nonrecipient surviving spouse was  
20 marital property held with the recipient and that 100 percent of the property in the  
21 estate of the nonrecipient surviving spouse is subject to the department's claim  
22 under par. (a).

23 SECTION 29. 49.496 (3) (am) (intro.) of the statutes is amended to read:

24 49.496 (3) (am) (intro.) The court shall reduce the amount of a claim under par.  
25 (a) by up to the amount specified in s. 861.33 (2) if necessary to allow the recipient's

1 decedent's heirs or the beneficiaries of the ~~recipient's~~ decedent's will to retain the  
2 following personal property:

3 **SECTION 30.** 49.496 (3) (c) 1. of the statutes is amended to read:

4 49.496 (3) (c) 1. If the department's claim is not allowable because of par. (b)  
5 and the estate includes an interest in any real property, including a home, the court  
6 exercising probate jurisdiction shall, in the final judgment or summary findings and  
7 order, assign the interest in the ~~home~~ real property subject to a lien in favor of the  
8 department for the amount described in par. (a). The personal representative or  
9 petitioner for summary settlement or summary assignment of the estate shall record  
10 the final judgment as provided in s. 863.29, 867.01 (3) (h), or 867.02 (2) (h).

11 **SECTION 31.** 49.496 (3) (c) 2. of the statutes is amended to read:

12 49.496 (3) (c) 2. If the department's claim is not allowable because of par. (b),  
13 the estate includes an interest in any real property, including a home, and the  
14 personal representative closes the estate by sworn statement under s. 865.16, the  
15 personal representative shall stipulate in the statement that the ~~home~~ real property  
16 is assigned subject to a lien in favor of the department for the amount described in  
17 par. (a). The personal representative shall record the statement in the same manner  
18 as described in s. 863.29, as if the statement were a final judgment.

19 **SECTION 32.** 49.496 (3) (d) (intro.) of the statutes is amended to read:

20 49.496 (3) (d) (intro.) The department may not enforce ~~the a~~ lien under par. (c)  
21 as long as any of the following survive the decedent:

22 **SECTION 33.** 49.496 (6) (b) of the statutes is amended to read:

23 49.496 (6) (b) The department may file a claim under sub. (3) only with respect  
24 to a recipient who dies after ~~September 30, 1991~~ the date that is 90 days after the  
25 effective date of this paragraph .... [LRB inserts date].

*to recover against the property of a decedent*

1           **SECTION 34.** 49.496 (6m) of the statutes is amended to read:

2           **49.496 (6m) WAIVER DUE TO HARDSHIP.** The department shall promulgate rules  
3 establishing standards for determining whether the application of this section would  
4 work an undue hardship in individual cases. If the department determines that the  
5 application of this section would work an undue hardship in a particular case, the  
6 department shall waive application of this section in that case. This subsection does  
7 not apply with respect to claims against the estates of nonrecipient surviving  
8 spouses.

9           **SECTION 35.** 49.4962 of the statutes is created to read:

10           **49.4962 Voiding certain transfers of real property. (1) DEFINITIONS.** In  
11 this section:

12           (a) “Conveyance” has the meaning given in s. 706.01 (4).

13           (b) “Fair market value” means the price that a willing buyer would pay a willing  
14 seller for the purchase of real property.

15           (c) “Fraudulent transfer” means any of the following:

16           1. A transfer of title to real property for less than fair market value.

17           2. A transfer of title to real property by a conveyance that is not recorded during  
18 the lifetime of the grantor in the office of the register of deeds of the county in which  
19 the real property is located.

20           (d) “Grantee” has the meaning given in s. 706.01 (6).

21           (e) “Grantor” has the meaning given in s. 706.01 (6).

22           **(2) VOIDABLE TRANSFERS.** (a) A transfer of real property to which all of the  
23 following apply is voidable by the department:

1           1. The transfer was made by a grantor who was receiving or who received  
2           medical assistance, or by someone on his or her behalf, during the time that the  
3           grantor was eligible for medical assistance.

4           2. The department was not notified and was unaware that the transfer was  
5           made.

6           3. The transfer was made to hinder, delay, or defraud the department from  
7           recovering medical assistance benefits that were paid on behalf of the grantor.

8           (b) The department may commence an action in circuit court against the  
9           grantee to void the transfer. If the court voids the transfer, the title to the real  
10          property reverts to the grantor or his or her estate.

11          (3) PRESUMPTION. There is a presumption, which may be rebutted by clear and  
12          convincing evidence, that a transfer described in sub. (2) (a) 1. that is a fraudulent  
13          transfer was made to hinder, delay, or defraud the department from recovering  
14          medical assistance benefits that were paid on behalf of the grantor.

15          (4) BURDEN OF PROOF. With respect to a transfer under sub. (1) (c) 1., the burden  
16          of proof for establishing fair market value is on the grantee. Fair market value must  
17          be established through a credible methodology, which may include an appraisal  
18          performed by a licensed appraiser.

19          (5) INAPPLICABLE TO PURCHASER IN GOOD FAITH. Subsection (2) does not apply if,  
20          after the transfer described in sub. (2), the real property was transferred by a  
21          conveyance to a purchaser in good faith and for a valuable consideration and the  
22          conveyance was recorded.

23          **SECTION 36.** 49.682 (1) (am) of the statutes is created to read:

24               49.682 (1) (am) "Decedent" means a deceased client or a deceased nonclient  
25               surviving spouse, whichever is applicable.

Insert 11-22

1           **SECTION 37.** 49.682 (1) (d) of the statutes is created to read:

2           49.682 (1) (d) "Nonclient surviving spouse" means any person who was married  
3 to a client while the client was receiving services for which the cost may be recovered  
4 under sub. (2) (a) and who survived the client.

5           **SECTION 38.** 49.682 (1) (e) of the statutes is created to read:

6           49.682 (1) (e) 1. "Property of a decedent" means all real and personal property  
7 to which the client held any legal title or in which the client had any legal interest  
8 immediately before death, to the extent of that title or interest, including assets  
9 transferred to a survivor, heir, or assignee through joint tenancy, tenancy in common,  
10 survivorship, life estate, living trust, or any other arrangement.

11           2. Notwithstanding subd. 1., "property of a decedent" includes any real  
12 property in which the nonclient surviving spouse had an ownership interest  
13 immediately before the client's death and in which the client had a marital property  
14 interest with that nonclient surviving spouse at any time within 5 years before the  
15 client applied for aid under s. 49.68, 49.683, or 49.685 or during the time that the  
16 recipient was eligible for aid under s. 49.68, 49.683, or 49.685.

17           **SECTION 39.** 49.682 (2) (a) of the statutes is amended to read:

18           49.682 (2) (a) Except as provided in par. (d), the department shall file a claim  
19 against the estate of a client ~~or, and~~ against the estate of the a nonclient surviving  
20 spouse ~~of a client,~~ for the amount of aid under s. 49.68, 49.683, or 49.685 paid to or  
21 on behalf of the client.

22           **SECTION 40.** 49.682 (2) (bm) of the statutes is created to read:

23           49.682 (2) (bm) 1. Property that is subject to the department's claim under par.  
24 (a) in the estate of a client or in the estate of a nonclient surviving spouse is all  
25 property of a decedent that is included in the estate.

1           2. There is a presumption, which may be rebutted by clear and convincing  
2 evidence, that all property in the estate of the nonclient surviving spouse was marital  
3 property held with the client and that 100 percent of the property in the estate of the  
4 nonclient surviving spouse is subject to the department's claim under par. (a).

5           **SECTION 41.** 49.682 (2) (c) (intro.) of the statutes is amended to read:

6           49.682 (2) (c) (intro.) The court shall reduce the amount of a claim under par.  
7 (a) by up to the amount specified in s. 861.33 (2) if necessary to allow the ~~client's~~  
8 decedent's heirs or the beneficiaries of the ~~client's~~ decedent's will to retain the  
9 following personal property:

10          **SECTION 42.** 49.682 (2) (e) 1. of the statutes is amended to read:

11          49.682 (2) (e) 1. If the department's claim is not allowable because of par. (d)  
12 and the estate includes an interest in real property, including a home, the court  
13 exercising probate jurisdiction shall, in the final judgment or summary findings and  
14 order, assign the interest in the ~~home~~ real property subject to a lien in favor of the  
15 department for the amount described in par. (a). The personal representative or  
16 petitioner for summary settlement or summary assignment of the estate shall record  
17 the final judgment as provided in s. 863.29, 867.01 (3) (h), or 867.02 (2) (h).

18          **SECTION 43.** 49.682 (2) (e) 2. of the statutes is amended to read:

19          49.682 (2) (e) 2. If the department's claim is not allowable because of par. (d),  
20 the estate includes an interest in real property, including a home, and the personal  
21 representative closes the estate by sworn statement under s. 865.16, the personal  
22 representative shall stipulate in the statement that the ~~home~~ real property is  
23 assigned subject to a lien in favor of the department for the amount described in par.  
24 (a). The personal representative shall record the statement in the same manner as  
25 described in s. 863.29, as if the statement were a final judgment.

1           **SECTION 44.** 49.682 (2) (f) (intro.) of the statutes is amended to read:

2           49.682 (2) (f) (intro.) The department may not enforce ~~the~~ a lien under par. (e)  
3 as long as any of the following survive the decedent:

4           **SECTION 45.** 49.682 (3) of the statutes is amended to read:

5           49.682 (3) The department shall administer the program under this section  
6 and may contract with an entity to administer all or a portion of the program,  
7 including gathering and providing the department with information needed to  
8 recover payment of aid provided under s. 49.68, 49.683, or 49.685. All funds received  
9 under this subsection, net of any amount claimed under s. ~~867.035 (3)~~ 49.849 (5),  
10 shall be remitted for deposit in the general fund.

11           **SECTION 46.** 49.682 (4) (b) of the statutes is amended to read:

12           49.682 (4) (b) The department may file a claim under sub. (2) only with respect  
13 to a client who dies after September 1, 1995 the date that is 90 days after the effective  
14 date of this paragraph .... [LRB inserts date].

15           **SECTION 47.** 49.682 (5) of the statutes is amended to read:

16           49.682 (5) The department shall promulgate rules establishing standards for  
17 determining whether the application of this section would work an undue hardship  
18 in individual cases. If the department determines that the application of this section  
19 would work an undue hardship in a particular case, the department shall waive  
20 application of this section in that case. This subsection does not apply with respect  
21 to claims against the estates of nonclient surviving spouses.

22           **SECTION 48.** 49.848 of the statutes is created to read:

23           **49.848 Treatment of real property owned by certain public assistance**  
24 **recipients. (1) DEFINITIONS.** In this section:

25           (a) "Department" means the department of health services.

*to recover against the property of a decedent*

(b) "Public assistance" means any services provided as a benefit under a long-term care program, as defined in s. 49.496 (1) (bk), that may be recoverable under s. 49.496 (3) (a); medical assistance under subch. IV that may be recoverable under s. 49.496 (3) (a); long-term community support services funded under s. 46.27 (7) that may be recoverable under s. 46.27 (7g) (c) 1.; or aid under s. 49.68, 49.683, or 49.685 that may be recoverable under s. 49.682 (2) (a).

(c) "Recipient" means a person who received public assistance.

(2) CREATION OF DOCUMENTS FOR RECORDING. The department shall create all of the following for recording in the office of the register of deeds in the real estate records index:

(a) A document entitled "REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM," which shall require notice to the department with respect to any transfer of title to, placement of an encumbrance on, or termination of an interest in, the property to which the document relates and which shall provide notice that the department may have a claim against the property to which the document relates on the basis of providing public assistance to an individual who has or had a legal interest in the property.

→ *disclose or*  
\*\*\*NOTE: I didn't require parties to notify the department in this paragraph, as suggested, because this paragraph is intended to be just a description of the document and the parties are required to notify the department in proposed s. 49.848(4).  
→ *disclose or* → *(3m) and*

(b) A document entitled "TERMINATION OF REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM," which shall provide notice that, with respect to property *✓* *or* *against* which a REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has been recorded, no notice to the department is required when title to the

1 property is transferred, an encumbrance is placed on the property, or an interest in  
2 the property is terminated.

3 (c) A document entitled "CERTIFICATE OF CLEARANCE," which shall  
4 provide notice that, with respect to property <sup>2</sup> ~~for~~ <sup>against</sup> which a REQUEST FOR NOTICE  
5 OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has  
6 been recorded, but against which a TERMINATION OF REQUEST FOR NOTICE  
7 OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has  
8 not been recorded, no notice to the department is required when title to the property  
9 is transferred, an encumbrance is placed on the property, or an interest in the  
10 property is terminated.

\*\*\*\*NOTE: The above two documents are described as doing the exact same thing.  
Is this okay? Maybe one document is sufficient.

11 (3) RECORDING OF REQUEST FOR NOTICE AND TERMINATION OF REQUEST FOR NOTICE.

12 (a) 1. Whenever an individual becomes eligible for public assistance, the department  
13 ~~shall~~ <sup>may</sup> record a REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND  
14 NOTICE OF POTENTIAL CLAIM if the individual has any of the following  
15 ownership interests in real property:

16 a. A current ownership interest in real property, including a marital property  
17 interest.

18 b. At any time within 5 years before the individual applied for public assistance,  
19 a marital property interest in real property with his or her current spouse, if that  
20 spouse currently holds title to the real property.

\*\*\*\*NOTE: I limited this to the spouse's ownership of the property because, if the  
recipient still has a marital property interest in the property, it would come under subd.  
1. a. above.

\*\*\*\*NOTE: This is limited to the 5 years *before application* because, as drafted, this  
applies when an individual is determined to be eligible. If you prefer, it can be drafted  
so that DHS records the document when an individual is determined to be eligible *and*  
at any time during the period that the individual is eligible.

1           2. The department shall record the document in the office of the register of  
2       deeds of the county in which the real property under subd. 1. a. or b., whichever is  
3       applicable, is located.

4           3. In this paragraph, an interest in real property includes a vendee's or vendor's  
5       interest in a land contract or an interest in real property held in a revocable trust.

6           (b) Whenever the department determines that, with respect to <sup>✓</sup>property <sup>for</sup>  
7       <sup>against</sup> which a REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND  
8       NOTICE OF POTENTIAL CLAIM has been recorded, the department no longer  
9       requires notice when title to the property is transferred, an encumbrance is placed  
10      on the property, or an interest in the property is terminated, the department shall  
11      record a TERMINATION OF REQUEST FOR NOTICE OF TRANSFER OR  
12      ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM in the office of the  
13      register of deeds of the county in which the REQUEST FOR NOTICE OF  
14      TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM with  
15      respect to the property was recorded.

      \*\*\*NOTE: This is pretty vague, since it does not provide any reason for why the  
      department would make this determination. Is it possible to specify when the  
      department would do this, or are the reasons potentially too numerous or indefinite to  
      specify?

16          **(3m)** DISCLOSURE OF REQUEST FOR NOTICE. If, in the course of a title search on  
17      real property, a title insurance company or agent finds that a REQUEST FOR  
18      NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL  
19      CLAIM has been recorded against the property but a TERMINATION OF  
20      REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF  
21      POTENTIAL CLAIM has not been recorded against the property, the title insurance  
22      company or agent shall disclose that a REQUEST FOR NOTICE OF TRANSFER OR  
23      ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has been recorded

1 against the property in any report submitted preliminary to issuing, or in any  
2 commitment to offer, a certificate of title insurance for the real property.

3 (4) TRANSFERRING, ENCUMBERING, OR TERMINATING AN INTEREST IN PROPERTY;  
4 CLEARANCE BY THE DEPARTMENT. (a) Any person transferring title to, encumbering, or  
5 terminating an interest in, property against which a REQUEST FOR NOTICE OF  
6 TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has  
7 been recorded, but against which a TERMINATION OF REQUEST FOR NOTICE  
8 OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has  
9 not been recorded, shall notify the department of the proposed transfer,  
10 encumbrance, or termination of interest.

11 (b) If, on the date that the person sends the notice under par. (a), the recipient  
12 who had the ownership interest in the property when the department recorded the  
13 REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF  
14 POTENTIAL CLAIM is alive, the person may transfer title to, encumber, or  
15 terminate an interest in, the property with no further action by the department.

\*\*\*\*NOTE: Will the person necessarily know that the recipient is alive? Will the  
department provide some notice (or perhaps a Certificate of Clearance?) to the person  
that the property may be transferred?

16 (c) If, on the date that the person sends the notice under par. (a), the recipient  
17 who had the ownership interest in the property when the department recorded the  
18 REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF  
19 POTENTIAL CLAIM is deceased, all of the following apply:

20 1. The department shall determine whether it has a claim against the property  
21 for amounts paid on behalf of the recipient that are recoverable under s. 46.27 (7g)

22 (c) 1., 49.496 (3) (a), or 49.682 (2) (a).

1           2. If the department determines that it has no claim under subd. 1., the  
2           department shall issue to the person seeking to transfer title to, encumber, or  
3           terminate an interest in, the real property a **CERTIFICATE OF CLEARANCE**,  
4           which the person shall record along with the instrument transferring title to,  
5           encumbering, or terminating the interest in, the property.

6           3. If the department determines that it has a claim under subd. 1., the  
7           department shall follow the procedure under sub. (5).

8           4. Transferring title to, encumbering, or terminating an interest in, the  
9           property is not valid unless the department issues to the person, and the person  
10          records, a **CERTIFICATE OF CLEARANCE**.

11          **(5) PROCEDURE IF DEPARTMENT HAS A CLAIM AGAINST REAL PROPERTY.** (a) This  
12          subsection applies in any of the following situations:

13           1. If the department determines that it has a claim against real property under  
14           sub. (4) (c) 1.

15           2. Upon the death of a recipient who, immediately before death, had an  
16           ownership interest in real property, including a marital property interest, or whose  
17           surviving spouse has an ownership interest in real property in which the recipient  
18           had a marital property interest with that spouse at any time within 5 years before  
19           the recipient applied for public assistance or during the time that the recipient was  
20           eligible for public assistance, regardless of whether the department recorded a  
21           **REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF**  
22           **POTENTIAL CLAIM** with respect to the property.

23           (b) The department shall send to the person providing the notice to the  
24           department under sub. (4) (a), or to the surviving owner of the property, whichever  
25           is applicable, a statement of claim that states all of the following:

\*\*\*\*NOTE: Should this procedure be limited to when the property is not being transferred under s. 867.03 (1g) or through informal or formal administration?

1. That the department has a claim against the property that it intends to recover from the property.

2. The amount of and basis for the claim.

3. That the person has a right to an administrative hearing on the extent and fair market value of the recipient's interest in the property and how to request an administrative hearing. *Insert 20-6* ✓

\*\*\*\*NOTE: See second NOTE after sub. (5) (b) (intro.).

4. That the transferee of the recipient's interest in the property or the surviving owner of the property may request from the department a hardship waiver and how to request a hardship waiver.

(c) The department may recover against the property in the manner determined by the department to be appropriate, including by placing a lien on the property. Subject to par. (d), the department may enforce a lien on the property by foreclosure in the same manner as a mortgage on real property.

(d) The department may not enforce a lien under par. (c) as long as any of the following *survives* → *is alive* ✓

1. The recipient's spouse.

2. The recipient's child who is under age 21 or disabled, as defined in s. 49.468

(1) (a) 1.

(e) If the recipient's surviving spouse or child who is under age 21 or disabled refinances a mortgage on the property, *the department's* *any* lien *is subordinate to the* *under par. (c)* ✓

(f) The department shall release a lien under par. (c) that the department could not enforce because of par. (d), if any of the following applies:

1 1. The recipient's surviving spouse or child who is under age 21 or disabled sells  
2 the property for fair market value, as described in s. 49.849 (5c) (d), during the  
3 spouse's or child's lifetime.

4 2. The recipient's surviving spouse or child who is under age 21 or disabled  
5 transfers the property for less than fair market value, as described in s. 49.849 (5c)  
6 (d), during the spouse's or child's lifetime, the transferee sells the property during the  
7 spouse's or child's lifetime and places proceeds equal to the lesser of the department's  
8 lien or the sale proceeds due to the seller in a trust or bond, and the department is  
9 paid the secured amount upon the death of the recipient's spouse or disabled child  
10 or when the recipient's child who is not disabled reaches age 22.

11 3. The surviving owner or transferee of the property, who is not the recipient's  
12 surviving spouse or child who is under age 21 or disabled, sells the property during  
13 the lifetime of the recipient's surviving spouse or child who is under age 21 or  
14 disabled and places proceeds equal to the lesser of the department's lien or the sale  
15 proceeds due to the seller in a trust or bond, and the department is paid the secured  
16 amount upon the death of the recipient's spouse or disabled child or when the  
17 recipient's child who is not disabled reaches age 22.

18 **SECTION 49.** 49.849 of the statutes is created to read:

19 **49.849 Recovery of correct payments under certain public assistance**  
20 **programs. (1) DEFINITIONS.** In this section:

21 (a) "Decedent" means a deceased recipient or a deceased nonrecipient surviving  
22 spouse, whichever is ~~appropriate~~ *applicable* ✓

23 (b) "Department" means the department of health services.

1 (c) "Nonrecipient surviving spouse" means any person who was married to a  
2 recipient while the recipient was receiving public assistance and who survived the  
3 recipient.

4 (d) 1. "Property of a decedent" means all real and personal property to which  
5 the recipient held any legal title or in which the recipient had any legal interest  
6 immediately before death, to the extent of that title or interest, including assets  
7 transferred to a survivor, heir, or assignee through joint tenancy, tenancy in common,  
8 survivorship, life estate, living trust, or any other arrangement.

9 2. Notwithstanding subd. 1., "property of a decedent" includes any real  
10 property in which the nonrecipient surviving spouse had an ownership interest  
11 immediately before <sup>at</sup> the recipient's death and in which the recipient had a marital  
12 property interest with that nonrecipient surviving spouse at any time within 5 years  
13 before the recipient applied for public assistance or during the time that the recipient  
14 was eligible for public assistance.

15 (e) "Public assistance" means any services provided as a benefit under a  
16 long-term care program, as defined in s. 49.496 (1) (bk), medical assistance under  
17 subch. IV, long-term community support services funded under s. 46.27 (7), or aid  
18 under s. 49.68, 49.683, or 49.685.

19 (f) "Recipient" means a person who received public assistance.

20 (2) RECOVERABLE AMOUNTS. (c) There is a presumption, which may be rebutted  
21 by clear and convincing evidence, that all property of the deceased nonrecipient  
22 surviving spouse was marital property held with the recipient and that 100 percent  
23 of the property of the deceased nonrecipient surviving spouse is subject to the  
24 department's claim under par. (a).

1           (3) TRANSMITTAL OF PROPERTY UPON RECEIPT OF AFFIDAVIT. (a) Any property of a  
2       decedent that is transferred by a person who has possession of the property at the  
3       time of the decedent's death is subject to the right of the department to recover the  
4       amounts specified in sub. (2) (a). Upon request, the person who transferred the  
5       property shall provide to the department information about the property of the  
6       decedent that the person has transferred and information about the persons to whom  
7       the property was transferred.

8           (c) An affidavit under this subsection shall contain all of the following  
9       information:

10          1. That the department has a claim against the property that it intends to  
11       recover from the property.

12          2. The amount of and basis for the claim.

13          3. That the person may have a right to an administrative hearing under sub.  
14       (5m) on the extent and fair market value of the ~~decedent's~~ <sup>recipients</sup> interest in the property.

15          4. How to request an administrative hearing under sub. (5m).

16          5. That the person may request from the department a hardship waiver, if the  
17       person co-owned the property with the decedent or is a beneficiary of the property.

18          6. How to request a hardship waiver under subd. 5.

19       (4) RECOVERY AGAINST REAL PROPERTY. (b) Section 49.848 (5) applies to the  
20       department's recovery of the amount, or portion of the amount, that it may recover  
21       under sub. (2) (a) from any property of the decedent that is real property.

22       (4m) ALLOWABLE COSTS OF SALE OF REAL PROPERTY. (a) Subject to par. (b), if any  
23       ~~real~~ <sup>that is real property</sup> property of a decedent has been sold after the death of the decedent, only the  
24       following reasonable expenses, if any, incurred in preserving or disposing of the real  
25       property may be deducted from the sale proceeds that the department may recover:

1. Closing costs of sale, including reasonable attorney fees of the seller, the cost of title insurance, and recording costs.

2. Property insurance premiums.

3. Property taxes due.

4. Utility costs necessary to preserve the property.

5. Expenses incurred in providing necessary maintenance or making necessary repairs, without which the salability of the property would be substantially impaired.

(b) Any expense under par. (a) may be deducted from the sale proceeds only if it is documented and approved by the department and it was not incurred while any other individual was living on the property.

(5c) VALUE OF ~~DECEDENT'S~~ INTEREST. For purposes of determining the value of the ~~decident's~~ interest in property of the decedent, all of the following apply:

(a) If the ~~decident~~ held title to real property jointly with one or more persons other than his or her spouse, the ~~decident's~~ interest in the real property is equal to the fractional interest that the ~~decident~~ would have had in the property if the property had been held with the other owner or owners as tenants in common.

(b) If the ~~decident~~ held title to personal property jointly with one or more persons other than his or her spouse, the ~~decident's~~ interest in the personal property is equal to either of the following:

1. The percentage interest that was attributed to the ~~decident~~ when his or her eligibility for public assistance was determined.

2. If the percentage interest was not determined as provided in subd. 1., the fractional interest that the ~~decident~~ would have had in the property if the property had been held with the other co-owner or co-owners as tenants in common.

*recipient*

(c) If the *decedent* held a life estate in real property, the *decedent's* interest is equal to the *decedent's* percentage of ownership in the property based on the *decedent's* age on the date of death and calculated using the fair market value of the property and life estate-remainderman tables used by the department to value life estates for purposes of determining eligibility for Medical Assistance.

*Recipients*

\*\*\*\*NOTE: I added "in the property" after "ownership." The suggested change was to add "life tenant" before "ownership," but I don't think that really answers the question of what "ownership" refers to. Is my change okay?

(d) A property's fair market value is the price that a willing buyer would pay a willing seller for the purchase of the property. The burden of proof for establishing a property's fair market value is on the surviving owners or beneficiaries, or their representatives. Fair market value must be established through a credible methodology, which may include an appraisal performed by a licensed appraiser.

**(5m)** FAIR HEARING. A person who has possession of any property of the decedent, or who receives an affidavit from the department under sub. (3) (c) for transmittal of any property of the decedent, is entitled to and may request a departmental fair hearing on the value of property and the extent of the *decedent's* interest in the property, if the property is not being transferred under s. 867.03 or through formal or informal administration of the decedent's estate.

**(5r)** ACTION OR ORDER TO ENFORCE RECOVERY. (a) If, after receipt of an affidavit under sub. (3), a person who possesses property of a decedent fails to transmit the property to the department, the department may bring an action to enforce its right to collect amounts specified in sub. (2) (a) from the property or may issue an order to compel transmittal of the property. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after the

1 date of the order. The only issue at the hearing shall be the determination by the  
2 department that the person has not transmitted the property to the department.

3 (b) If any person named in an order to compel transmittal of property issued  
4 under par. (a) fails to transmit the property under the terms of the order and no  
5 contested case to review the order is pending and the time for filing for a contested  
6 case review has expired, the department may present a certified copy of the order to  
7 the circuit court for any county. The sworn statement of the secretary shall be  
8 evidence of the department's right to collect amounts specified in sub. (2) (a) from the  
9 property and of the person's failure to transmit the property to the department. The  
10 circuit court shall, without notice, render judgment in accordance with the order. A  
11 judgment rendered under this paragraph shall have the same effect and shall be  
12 entered in the judgment and lien docket and may be enforced in the same manner  
13 as if the judgment had been rendered in an action tried and determined by the circuit  
14 court.

15 (c) The recovery procedure under this subsection is in addition to any other  
16 recovery procedure authorized by law.

17 (6) PAYMENTS FROM RECOVERED AMOUNTS.

18 SECTION 50. 49.85 (title) of the statutes is amended to read:

19 49.85 (title) **Certification of certain public assistance overpayments,**  
20 **payment recoveries, and delinquent loan repayments.**

21 SECTION 51. 49.85 (2) (a) (intro.) of the statutes is amended to read:

22 49.85 (2) (a) (intro.) At least annually, the department of health services shall  
23 certify to the department of revenue the amounts that, based on the notifications  
24 received under sub. (1) and on other information received by the department of  
25 health services, the department of health services has determined that it may

1 recover under s. 49.45 (2) (a) 10., 49.497, 49.793, ~~or~~ 49.847, or 49.849, except that the  
2 department of health services may not certify an amount under this subsection  
3 unless all of the following apply:

4 **SECTION 52.** 49.85 (2) (a) 4. of the statutes is created to read:

5 49.85 (2) (a) 4. If the determination relates to recovery of an amount under s.  
6 49.849, the determination was rendered to a judgment under s. 49.849 (5r) (b).

7 **SECTION 53.** 49.85 (3) (a) 1. of the statutes is amended to read:

8 49.85 (3) (a) 1. Inform the person that the department of health services  
9 intends to certify to the department of revenue an amount that the department of  
10 health services has determined to be due under s. 49.45 (2) (a) 10., 49.497, 49.793,  
11 ~~or~~ 49.847, or 49.849, for setoff from any state tax refund that may be due the person.

12 **SECTION 54.** 59.43 (1) (w) of the statutes is created to read:

13 59.43 (1) (w) Record and index the documents specified in s. 49.848 (2).

14 **SECTION 55.** 632.697 of the statutes is created to read:

15 **632.697 Benefits subject to department's right to recover.** Death  
16 benefits payable under a life insurance policy or an annuity are subject to the right  
17 of the department of health services to recover under s. 46.27 (7g), 49.496, 49.682,  
18 or 49.849 an amount equal to the medical assistance that is recoverable under s.  
19 49.496 (3) (a), an amount equal to aid under s. 49.68, 49.683, or 49.685 that is  
20 recoverable under s. 49.682 (2) (a), or an amount equal to long-term community  
21 support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c) 1. and that  
22 was paid on behalf of the deceased policyholder or annuitant or the spouse of the  
23 deceased policyholder or annuitant.

\*\*\*\*NOTE: Does it make sense to include the spouse here?

24 **SECTION 56.** 700.24 of the statutes is amended to read:

1           **700.24 Death of a joint tenant; effect of liens.** A real estate mortgage, a  
2 security interest under ch. 409, or a lien under s. 72.86 (2), 1985 stats., or s. 71.91 (5)  
3 (b), or ch. 49 or 779 or rules promulgated under s. 46.286 (7) on or against the interest  
4 of a joint tenant does not defeat the right of survivorship in the event of the death  
5 of such joint tenant, but the surviving joint tenant or tenants take the interest such  
6 deceased joint tenant could have transferred prior to death subject to such mortgage,  
7 security interest, or statutory lien.

8           **SECTION 57.** 701.065 (1) (b) 1. of the statutes is amended to read:

9           701.065 (1) (b) 1. The claim is a claim based on tort, on a marital property  
10 agreement that is subject to the time limitations under s. 766.58 (13) (b) or (c), on  
11 Wisconsin income, franchise, sales, withholding, gift, or death taxes, or on  
12 unemployment compensation contributions due or benefits overpaid; a claim for  
13 funeral or administrative expenses; a claim of this state under s. 46.27 (7g), 49.496  
14 ~~or, 49.682, or rules promulgated under s. 46.286 (7)~~ 49.849; or a claim of the United  
15 States.

16           **SECTION 58.** 701.065 (5) of the statutes is created to read:

17           701.065 (5) CLAIMS OF DEPARTMENT OF HEALTH SERVICES. (a) *Definitions.* In this  
18 subsection:

19           1. “Department” means the department of health services.

20           2. “Long-term care program” has the meaning given in s. 49.496 (1) (bk).

21           (b) *Living trusts.* 1. Notwithstanding sub. (1) (a), if a settlor, or the spouse of  
22 a settlor, of a living trust at anytime received any services provided as a benefit under  
23 a long-term care program, medical assistance under subch. IV of ch. 49, long-term  
24 community support services funded under s. 46.27 (7), or aid under s. 49.68, 49.683,  
25 or 49.685, the trustee shall provide written notice to the department by registered

1 or certified mail, within 30 days after the death of the settlor and before any property  
2 held in the trust is distributed. The notice shall include demographic information  
3 about the decedent and the decedent's spouse, if any, information about how to file  
4 a claim, a copy of the trust document, and documentation supporting the value of the  
5 trust on the decedent's date of death.

6 2. After the death of a settlor described in subd. 1., the department may recover  
7 under s. 46.27 (7g), 49.496, 49.682, or 49.849, from property held in the living trust  
8 immediately before the settlor's death, an amount equal to the medical assistance  
9 that is recoverable under s. 49.496 (3) (a), an amount equal to aid under s. 49.68,  
10 49.683, or 49.685 that is recoverable under s. 49.682 (2) (a), or an amount equal to  
11 long-term community support services under s. 46.27 that is recoverable under s.  
12 46.27 (7g) (c) 1. and that was paid on behalf of the decedent or the decedent's spouse.

\*\*\*\*NOTE: If the spouse of the settlor received the services, does the settlor's spouse  
need to have predeceased the settlor in the two subdivisions above?

13 3. Within 90 days after receipt of a claim for recovery from the department, a  
14 trustee under subd. 1. shall pay to the department any amount that the department  
15 may recover under subd. 2. If the trustee distributes property from the trust before  
16 the department makes a claim to the trustee for the recovery of any amount specified  
17 in subd. 2., the trustee shall provide the department with information about the  
18 distributed property and to whom it was distributed or transferred. The department  
19 is entitled to recover any amounts specified in subd. 2. from the persons to whom the  
20 property was distributed or transferred.

\*\*\*\*NOTE: I asked our trust drafter to review these provisions. She suggested that  
it might be helpful if there were a time limit on how long the department has to make a  
claim after receiving the notice from the trustee. That way, the trustee and any persons  
receiving property from the trust would have some finality.

1           (c) *Special needs or pooled trusts.* 1. Notwithstanding sub. (1) (a), within 30  
2       days after the death of a beneficiary under a trust described in 42 USC 1396p (d) (4)  
3       (A) or (C), the trustee shall provide written notice to the department by registered  
4       or certified mail. The notice shall include demographic information about the  
5       decedent, information about how to file a claim, a copy of the trust document, and  
6       documentation supporting the value of the decedent's property held in the trust on  
7       the decedent's date of death. Within 90 days after receipt of a claim from the  
8       department, the trustee shall repay the department for any medical assistance paid  
9       on behalf of the decedent, as required under the terms of the trust.

10           2. If a trustee under subd. 1. fails to comply with the notice and repayment  
11       requirements under subd. 1., the trustee is personally liable to the department for  
12       any costs the department incurs in recovering medical assistance amounts paid on  
13       behalf of the decedent from property distributed from the trust before any repayment  
14       is made and for any recoverable amounts that the department is unable to recover  
15       from persons to whom the property was distributed.

16           3. Notwithstanding the terms of the trust, after the death of a beneficiary under  
17       a trust described in 42 USC 1396p (d) (4) (C), the trustee may retain up to 30 percent  
18       of the balance in the decedent's account, unless the trustee fails to comply with the  
19       notice and repayment requirements under subd. 1., in which case the trustee may  
20       not retain any of the balance in the decedent's account.

21           **SECTION 59.** 705.04 (2g) of the statutes is amended to read:

22           705.04 (2g) Notwithstanding subs. (1) and (2), the department of health  
23       services may collect, from funds of a decedent that are held by the decedent  
24       immediately before death in a joint account or a P.O.D. account, an amount equal to  
25       the medical assistance that is recoverable under s. 49.496 (3) (a), an amount equal

1 to aid under s. 49.68, 49.683, or 49.685 that is recoverable under s. 49.682 (2) (a), or  
2 an amount equal to long-term community support services under s. 46.27 that is  
3 recoverable under s. 46.27 (7g) (c) 1. and that was paid on behalf of the decedent or  
4 the decedent's spouse ~~or an amount equal to the family care benefit under s. 46.286~~  
5 ~~that is recoverable under rules promulgated under s. 46.286 (7) and that was paid~~  
6 ~~on behalf of the decedent or the decedent's spouse.~~

7 **SECTION 60.** 766.55 (2) (bm) of the statutes is created to read:

8 766.55 (2) (bm) An obligation incurred by a spouse that is recoverable under  
9 s. 46.27 (7g), 49.496, 49.682, 49.848 or 49.849 may be satisfied from all property that  
10 was the property of that spouse immediately before that spouse's death and from all  
11 property that was marital property at any time within 5 years before that spouse  
12 applied for public assistance, as defined in s. 49.849 (1) (e), and while that spouse was  
13 eligible for public assistance, as defined in s. 49.849 (1) (e).

\*\*\*\*NOTE: I have included a marital property provision, as you suggested. I don't  
think that it adds anything more to what is included in the draft in the ch. 49 sections.  
However, it is up to you whether it stays in the draft, as is or modified.

14 **SECTION 61.** 859.02 (2) (a) of the statutes is amended to read:

15 859.02 (2) (a) It is a claim based on tort, on a marital property agreement that  
16 is subject to the time limitations under s. 766.58 (13) (b) or (c), on Wisconsin income,  
17 franchise, sales, withholding, gift, or death taxes, or on unemployment insurance  
18 contributions due or benefits overpaid; a claim for funeral or administrative  
19 expenses; a claim of this state under s. 46.27 (7g), 49.496 ~~or~~, 49.682, or rules  
20 promulgated under s. 46.286 (7) 49.849; or a claim of the United States; or

21 **SECTION 62.** 859.07 (2) (a) 3. of the statutes is amended to read:

22 859.07 (2) (a) 3. The decedent or the decedent's spouse received ~~the family care~~  
23 ~~benefit under s. 46.286~~ services provided as a benefit under a long-term care

1 program, as defined in s. 49.496 (1) (bk), medical assistance under subch. IV of ch.  
2 49, long-term community support services funded under s. 46.27 (7), or aid under s.  
3 49.68, 49.683, or 49.685.

4 **SECTION 63.** 867.01 (3) (am) 4. of the statutes is amended to read:

5 867.01 (3) (am) 4. Whether the decedent or the decedent's spouse received ~~the~~  
6 ~~family care benefit under s. 46.286~~ services provided as a benefit under a long-term  
7 care program, as defined in s. 49.496 (1) (bk), medical assistance under subch. IV of  
8 ch. 49, long-term community support services funded under s. 46.27 (7) or aid under  
9 s. 49.68, 49.683 or 49.685.

10 **SECTION 64.** 867.01 (3) (d) of the statutes is amended to read:

11 867.01 (3) (d) *Notice.* The court may hear the matter without notice or order  
12 notice to be given under s. 879.03. If the decedent or the decedent's spouse received  
13 ~~the family care benefit under s. 46.286~~ services provided as a benefit under a  
14 long-term care program, as defined in s. 49.496 (1) (bk), medical assistance under  
15 subch. IV of ch. 49, long-term community support services funded under s. 46.27 (7),  
16 or aid under s. 49.68, 49.683, or 49.685, the petitioner shall give notice by certified  
17 mail to the department of health services as soon as practicable after filing the  
18 petition with the court.

19 **SECTION 65.** 867.02 (2) (am) 6. of the statutes is amended to read:

20 867.02 (2) (am) 6. Whether the decedent or the decedent's spouse received ~~the~~  
21 ~~family care benefit under s. 46.286~~ services provided as a benefit under a long-term  
22 care program, as defined in s. 49.496 (1) (bk), medical assistance under subch. IV of  
23 ch. 49, long-term community support services funded under s. 46.27 (7), or aid under  
24 s. 49.68, 49.683, or 49.685.

25 **SECTION 66.** 867.03 (1g) (c) of the statutes is amended to read:

1           867.03 (1g) (c) Whether the decedent or the decedent's spouse ever received the  
2 ~~family care benefit under s. 46.286 services provided as a benefit under a long-term~~  
3 ~~care program, as defined in s. 49.496 (1) (bk),~~ medical assistance under subch. IV of  
4 ch. 49, long-term community support services funded under s. 46.27 (7) or aid under  
5 s. 49.68, 49.683 or 49.685.

6           **SECTION 67.** 867.03 (1m) (a) of the statutes is amended to read:

7           867.03 (1m) (a) Whenever an heir, trustee, or person who was guardian of the  
8 decedent at the time of the decedent's death intends to transfer a decedent's property  
9 by affidavit under sub. (1g) and the decedent or the decedent's spouse ever received  
10 ~~the family care benefit under s. 46.286 services provided as a benefit under a~~  
11 ~~long-term care program, as defined in s. 49.496 (1) (bk),~~ medical assistance under  
12 subch. IV of ch. 49, long-term community support services funded under s. 46.27 (7),  
13 or aid under s. 49.68, 49.683, or 49.685, the heir, trustee, or person who was guardian  
14 of the decedent at the time of the decedent's death shall give notice to the department  
15 of health services of his or her intent. The notice shall include the information in the  
16 affidavit under sub. (1g) and the heir, trustee, or person who was guardian of the  
17 decedent at the time of the decedent's death shall give the notice by certified mail,  
18 return receipt requested.

19           **SECTION 68.** 867.03 (1m) (b) of the statutes is amended to read:

20           867.03 (1m) (b) An heir, trustee, or person who was guardian of the decedent  
21 at the time of the decedent's death who files an affidavit under sub. (1g) that states  
22 that the decedent or the decedent's spouse received ~~the family care benefit under s.~~  
23 ~~46.286 services provided as a benefit under a long-term care program, as defined in~~  
24 ~~s. 49.496 (1) (bk),~~ medical assistance under subch. IV of ch. 49, long-term community  
25 support services funded under s. 46.27 (7), or aid under s. 49.68, 49.683, or 49.685

1 shall attach to the affidavit the proof of mail delivery of the notice required under par.  
2 (a) showing ~~a the delivery date that is not less than 10 days before the day on which~~  
3 ~~the heir, trustee, or person who was guardian of the decedent at the time of the~~  
4 ~~decedent's death files the affidavit.~~

5 **SECTION 69.** 867.03 (2g) of the statutes is renumbered 867.03 (2g) (a) and  
6 amended to read:

7 867.03 (2g) (a) By accepting the decedent's property under this section the heir,  
8 trustee, or guardian assumes a duty to apply the property transferred for the  
9 payment of obligations according to priorities established under s. 859.25 and to  
10 distribute any balance to those persons designated in the appropriate governing  
11 instrument, as defined in s. 854.01, of the decedent or if there is no governing  
12 instrument, according to the rules of intestate succession under ch. 852, subject to  
13 par. (b). An heir or guardian may publish a notice to creditors in the same manner  
14 and with the same effect as a trustee under s. 701.065. This ~~subsection~~ paragraph  
15 does not prohibit any appropriate person from requesting administration of the  
16 decedent's estate under s. 856.07 or ch. 865.

17 **SECTION 70.** 867.03 (2g) (b) of the statutes is created to read:

18 867.03 (2g) (b) Property transferred under this section to or by an heir, trustee,  
19 or guardian is subject to the right of the department of health services to recover  
20 under s. 46.27 (7g), 49.496, 49.682, or 49.849 an amount equal to the medical  
21 assistance that is recoverable under s. 49.496 (3) (a), an amount equal to aid under  
22 s. 49.68, 49.683, or 49.685 that is recoverable under s. 49.682 (2) (a), or an amount  
23 equal to long-term community support services under s. 46.27 that is recoverable  
24 under s. 46.27 (7g) (c) 1. and that was paid on behalf of the decedent or the decedent's  
25 spouse. Upon request, the heir, trustee, or guardian shall provide to the department

1 of health services information about any of the decedent's property that the heir,  
2 trustee, or guardian has distributed and information about the persons to whom the  
3 property was distributed.

4 **SECTION 71.** 867.035 (title) of the statutes is repealed.

5 **SECTION 72.** 867.035 (1) (a) (intro.) of the statutes is renumbered 49.849 (2) (a)  
6 (intro.) and amended to read:

7 49.849 (2) (a) (intro.) Subject to par. ~~(bm)~~ (b), the department of health services  
8 may collect from the property of a decedent, ~~including funds of a decedent that are~~  
9 ~~held by the decedent immediately before death in a joint account or a P.O.D. account,~~  
10 by affidavit under sub. ~~(2)~~ (3) (b) or by lien under sub. ~~(2m)~~ (4) (a) an amount equal  
11 to the medical assistance that is recoverable under s. 49.496 (3) (a), the long-term  
12 community support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c)  
13 1., the family care benefit that is recoverable under rules promulgated under s.  
14 ~~46.286 (7)~~, or the aid under s. 49.68, 49.683, or 49.685 that is recoverable under s.  
15 49.682 (2) (a), and that was paid on behalf of the decedent or the decedent's spouse,  
16 if all of the following conditions are satisfied:

17 **SECTION 73.** 867.035 (1) (a) 1. of the statutes is repealed.

18 **SECTION 74.** 867.035 (1) (a) 2. of the statutes is renumbered 49.849 (2) (a) 1. ~~and~~

19 amended to read:

20 49.849 (2) (a) 1. The decedent died after September 30, 1991 the date that is  
21 90 days after the effective date of this subdivision .... [LRB inserts date].

22 **SECTION 75.** 867.035 (1) (a) 3. of the statutes is renumbered 49.849 (2) (a) 2.

23 **SECTION 76.** 867.035 (1) (a) 4. of the statutes is repealed.

24 **SECTION 77.** 867.035 (1) (bm) of the statutes is renumbered 49.849 (2) (b), and  
25 49.849 (2) (b) (intro.), as renumbered, is amended to read:

LPS-  
Change component  
→

1           49.849 (2) (b) (intro.) The department ~~of health services~~ shall reduce the  
2           amount of its recovery under par. (a) by up to the amount specified in s. 861.33 (2)  
3           if necessary to allow the decedent's heirs or beneficiaries under the decedent's will  
4           to retain the following personal property of the decedent:

5           **SECTION 78.** 867.035 (2) of the statutes is renumbered 49.849 (3) (b) and  
6           amended to read:

7           49.849 (3) (b) A person who possesses or receives property of a decedent shall  
8           transmit the property to the department ~~of health services~~, if the conditions in sub.  
9           ~~(1) (a) 1. to 4.~~ (2) (a) 1. and 2. are satisfied, upon receipt of an affidavit by a person  
10          designated by the secretary of health services to administer this section showing that  
11          the department paid on behalf of the decedent or the decedent's spouse recoverable  
12          benefits specified in sub. ~~(1)~~ (2) (a). Upon transmittal, the person is released from  
13          any obligation to other creditors or heirs of the decedent.

14          **SECTION 79.** 867.035 (2m) (a) of the statutes is renumbered 49.849 (4) (a), and  
15          49.849 (4) (a) (intro.), as renumbered, is amended to read:

16          49.849 (4) (a) (intro.) If the ~~conditions~~ condition in sub. ~~(1) (a) 1., 2., and 4. are~~  
17          (2) (a) 1. is satisfied, the department ~~of health services~~ shall have a lien in the amount  
18          that it may recover under sub. ~~(1)~~ (2) (a) on any interest in ~~the decedent's any~~  
19          property of the decedent that is real property, including a home, as defined in s.  
20          49.496 (1) (b), ~~transferred under s. 867.03 (1g).~~ The department may record the lien  
21          in the office of the register of deeds of the county in which the real property is located.  
22          The department may enforce the lien by foreclosure in the same manner as a  
23          mortgage on real property, unless any of the following is alive:

\*\*\*\*NOTE: I removed "transferred under s. 867.03 (1g)" because, as I understand it,  
this provision applies in other situations, too.

1           **SECTION 80.** 867.035 (2m) (b) of the statutes is repealed.

2           **SECTION 81.** 867.035 (3) of the statutes is renumbered 49.849 (5) and amended  
3 to read:

4           49.849 (5) OTHER VALID CLAIMS. If a person has a valid claim against ~~the~~  
5 ~~decedent's estate property of the decedent~~ that would have a higher priority under  
6 s. 859.25 (1) if the ~~estate were administered~~ property were subject to administration  
7 than the department of ~~health services~~ would have under s. 859.25 (1) (e) and the  
8 person demands payment in writing within one year of the date on which the  
9 property was transmitted to the department, the department shall pay to the person  
10 the value of the property collected under sub. (2) (3) or the amount of the claim,  
11 whichever is less. The department may authorize any person who possesses  
12 property of the decedent to honor higher priority claims with the decedent's property  
13 before transmitting property to the department.

14           **SECTION 82.** 867.035 (4) of the statutes is renumbered 49.849 (6) (a) and  
15 amended to read:

16           49.849 (6) (a) From the appropriation under s. 20.435 (4) (im), with respect to  
17 funds collected by the department under sub. (1) (2) related to medical assistance  
18 paid on behalf of the decedent or the decedent's spouse, the department of ~~health~~  
19 ~~services~~ shall pay claims under sub. (3) (5), shall pay to the federal government from  
20 the amount recovered under this section and not paid out as claims under sub. (3)  
21 (5) an amount equal to the amount of federal funds used to pay the benefits recovered  
22 under this section and shall spend the remainder of the amount recovered under this  
23 section for medical assistance benefits under subch. IV of ch. 49.

24           **SECTION 83.** 867.035 (4m) of the statutes is renumbered 49.849 (6) (b) and  
25 amended to read:

1           49.849 (6) (b) From the appropriation under s. 20.435 (7) (im), with respect to  
2 funds collected by the department under sub. (1) (2) related to long-term community  
3 support services funded under s. 46.27 (7) paid on behalf of the decedent or the  
4 decedent's spouse, the department of health services shall pay claims under sub. (3)  
5 (5) and shall spend the remainder of the funds recovered under this section for  
6 long-term community support services funded under s. 46.27 (7).

7           **SECTION 84.** 867.035 (5) of the statutes is renumbered 49.849 (7) and amended  
8 to read:

9           49.849 (7) RULES FOR HARDSHIP WAIVER. The department of health services shall  
10 promulgate rules establishing standards to determine whether the application of  
11 this section would work an undue hardship in individual cases. If the department  
12 of health services determines that the application of this section would work an  
13 undue hardship in a particular case, the department shall waive the application of  
14 this section in that case. This subsection does not apply with respect to collecting  
15 from the property of a decedent if the decedent is a deceased nonrecipient surviving  
16 spouse.

17           **SECTION 85.** 893.33 (6r) of the statutes is created to read:

18           893.33 (6r) This section applies to liens of the department of health services  
19 on real property under ss. 46.27 (7g), 49.496, 49.682, 49.848, and 49.849.

20           \*\*\*NOTE: Initial applicability and effective date provisions are not included in this  
version of the draft.

(END)

20

Insert 38-20

Y. nte

**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0617/P3ins  
PJK:.....

**INSERT 11-22**

1           (6) APPLICABILITY. ✓ This section applies to any of the following transfers of real  
2 property:

3           (a) A transfer that is made on or after the date that is 90 ✓ days after the effective  
4 date of this paragraph ✓ .... [LRB inserts date].

5           (b) A transfer that was made before the date that is 90 ✓ days after the effective  
6 date of this paragraph .... [LRB inserts date], if the grantor is receiving medical  
7 assistance on, or receives medical assistance after, the date that is ✓ 90 days after the  
8 effective date of this paragraph ✓ .... [LRB inserts date].

(END OF INSERT 11-22)

**INSERT 20-6**

9           not The value of the recipient's interest in the property shall be determined in the  
10 manner provided in s. 49.849 (5c). ✓

(END OF INSERT 20-6)

**INSERT 20-7**

✓ \*\*\*\*NOTE: Do you need a provision for a fair hearing in this section, like proposed  
s. 49.849 (5m)? ✓

(END OF INSERT 20-7)

**INSERT 21-3**

\*\*\*\*NOTE: Should this provision include something about the department being ✓  
paid the amount of its lien after the sale?

(END OF INSERT 21-3)

**INSERT 26-2**



*Ins 26-2*

✓ \*\*\*\*NOTE: Since a person who receives an affidavit may request a fair hearing under sub. (5m), do you want to specify a time limit after receipt of an affidavit and if no fair hearing is requested before the department may bring an action or issue an order, such as if 30 days ✓ have elapsed after receipt of the affidavit and the person has not requested a fair hearing or transmitted the property?

(END OF INSERT 26-2)

**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0617/P3insTD  
PJK&TJD:.....

INSERT 38-20

1003

**SECTION 9118. Nonstatutory provisions; Health Services.**

(1) RECORDING POTENTIAL CLAIM DOCUMENTS IN THE OFFICE OF THE REGISTER OF DEEDS. Notwithstanding section 49.848 (3) (a) 1. (intro.) of the statutes, as created by this act, and SECTION 9318 (3) of this act, the ~~Department of Health Services~~ may apply the provisions of section 49.848 of the statutes, as created by this act, with respect to individuals who are receiving public assistance, as defined in section 49.848 (1) (b) of the statutes, as created by this act, on October 1, 2013, or on the 90th day after publication, whichever is later, and who, when they applied for public assistance, as defined in section 49.848 (1) (b) of the statutes, as created by this act, had any of the ownership interests in real property specified in section 49.848 (3) (a) 1. a. and b. of the statutes, as created by this act.

\*\*\*\*NOTE: Do you want them to have these ownership interests on the effective date rather than when they applied for public assistance, as drafted above?

**SECTION 9318. Initial applicability; Health Services.**

(1) RECOVERY OF LONG-TERM CARE PAYMENTS. The treatment of section 49.496 (3) (a) 2. am. of the statutes first applies to additional services that are received by an individual who is participating in a long-term care program on the effective date of this subsection.

(2) RECOVERY OF CAPITATED PAYMENTS. The treatment of section 49.496 (3) (ad) of the statutes first applies to capitation payments made for services that are received by an individual who is participating in a managed long-term care program on the effective date of this subsection.

(3) SPECIAL NEEDS AND POOLED TRUSTS.

Ins 38-20 contd 28/3

1 (a) *Notices*. The treatment of section 701.065 (5) (c) 1. and 2. of the statutes first  
2 applies to deaths occurring on the effective date of this paragraph.

3 (b) *Retained amounts*. The treatment of section 701.065 (5) (c) 3. of the statutes  
4 first applies to deaths of beneficiaries under pooled trusts who apply for medical  
5 assistance on the effective date of this paragraph.

\*\*\*\*NOTE: This seems to be what the instructions are asking for, but I'm not sure  
it is what you intended. Does this work with the "Notwithstanding the terms of the trust"  
language in proposed s. 701.065 (5) (c) 3.? Perhaps the "notwithstanding" language is not  
needed.

6 auto reg D

(4) RECOVERY OF PUBLIC ASSISTANCE FROM PROPERTY OF A DECEDENT. The  
7 treatment of sections 46.27 (7g) (a) 5. and (c) 2m., 3. (intro.), and 5. a. and b., 49.496  
8 (1) (a), (af), (bw), and (cm) and (3) (a) (intro.) and 2. am., (ad), (aj), (am) (intro.), and  
9 (c) 1. and 2., 49.682 (1) (e) and (2) (bm), (c) (intro.), and (e) 1. and 2., 49.849 (1) (d),  
10 (2) (c), (3) (a), (4) (b), (4m), (5c), (5m), and (5r), 49.85 (title), (2) (a) (intro.) and 4., and  
11 (3) (a) 1., 701.065 (5) (c), 766.55 (2) (bm), and 867.035 (1) (a) (intro.), 1., and 4., (2),  
12 (2m) (a) and (b), and (3) of the statutes first applies to the recovery of public  
13 assistance, as defined in section 49.849 (1) (e) of the statutes, as created by this act,  
14 provided to individuals who die on the effective date of this subsection.

\*\*\*\*NOTE: The requested initial applicability was for medical assistance provided  
on the effective date to individuals who die on or after the effective date. It can only be  
one or the other: either recovery of public assistance (because it is more than MA) that  
is provided on or after the effective date or recovery from the estates, etc., of individuals  
who die on or after the effective date. Which is the important event, the date of the death  
or when public assistance was provided?

This initial applicability makes the date of death the important event; however, it can be modified to make public assistance provided on and after the effective date

15 (5) RECORDING POTENTIAL CLAIM DOCUMENTS IN THE OFFICE OF THE REGISTER OF  
16 DEEDS. The treatment of section 49.848 of the statutes first applies to individuals who  
17 are determined to be eligible for public assistance on October 1, 2013, or on the 90th  
18 day after publication, whichever is later.

\*\*\*\*NOTE: This is the logical initial applicability for proposed s. 49.848, since under  
the language in the draft the department records a document when an individual  
becomes eligible for public assistance. It is not necessary to delay the effective date of s.

Ins 38-20 cont'd 383

49.848 with an initial applicability as above. See the nonstatutory provision I have included.

1 **SECTION 9418. Effective dates; Health Services.**

2 (1) MEDICAL ASSISTANCE ESTATE RECOVERY. The treatment of sections 46.27 (7g)  
3 (a) 5. and (c) 2m., 3. (intro.), and 5. a. and b., 49.496 (1) (a), (af), (bw), and (cm) and  
4 (3) (a) (intro.) and 2. am., (ad), (aj), (am) (intro.), and (c) 1. and 2., 49.682 (1) (e) and  
5 (2) (bm), (c) (intro.) and (e) 1. and 2., 49.849 (1) (d), (2) (c), (3) (a), (4) (b), (4m), (5c),  
6 (5m), and (5r), 49.85 (title), (2) (a) (intro.) and 4., and (3) (a) 1., 701.065 (5) (c), 766.55  
7 (2) (bm), and 867.035 (1) (a) (intro.), 1., and 4., (2), (2m) (a) and (b), and (3) of the  
8 statutes and SECTION 9318 (1), (2), (3), and (4) of this act take effect on October 1,  
9 2013, or on the 90th day after publication, whichever is later.

(END OF INSERT 38-20)

auto ref A

auto ref B

auto ref C

auto ref D

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0617/P3dn

PJK:.....

date

jld

Note that throughout the draft I have defined "property of a decedent" to be only the specified property that the recipient had at death or marital property the recipient had before application for, or while eligible for, public assistance. ✓ This is because a decedent is defined to be the deceased recipient or the deceased surviving spouse of the recipient. ✓ I wanted to get across the idea that when the department tries to recover at the death of either person (the decedent), the amount of the recovery is limited to the recipient's interest in the property. If you believe this is too confusing and want the term to be "property of the recipient," I can change it. ✓ \*

Note also that since "decedent" means either the recipient or the recipient's deceased surviving spouse, the department may not enforce a lien, etc., if the deceased surviving spouse remarried after the death of the recipient and has a surviving spouse. ✓ Is this your intention?

For the nonstatutory Effective Date provision at the end of this draft, I included those sections that seemed to expand the type of property that could be recovered or the people from whom the property could be recovered. ✓ I did not include provisions that did not make any substantive change to current law (for example, in current law s. 46.27 (7g), a claim may already be filed against the estate of a deceased surviving spouse, so I did not include s. 46.27 (7g) (c) 1.). You may want to include more or different sections. ✓

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.wisconsin.gov

NO  
4 Would you prefer to include all of the sections in this draft <sup>(I)</sup> in the delayed effective date provision?

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0617/P3dn  
PJK:jld:ph

January 25, 2013

Note that throughout the draft I have defined "property of a decedent" to be only the specified property that the recipient had at death or marital property the recipient had before application for, or while eligible for, public assistance. This is because a decedent is defined to be the deceased recipient or the deceased surviving spouse of the recipient. I wanted to get across the idea that, when the department tries to recover at the death of either person (the decedent), the amount of the recovery is limited to the recipient's interest in the property. If you believe this is too confusing and want the term to be "property of the recipient," I can change it.

Note also that since "decedent" means either the recipient or the recipient's deceased surviving spouse, the department may not enforce a lien, etc., if the deceased surviving spouse remarried after the death of the recipient and has a surviving spouse. Is this your intention?

For the nonstatutory Effective Date provision at the end of this draft, I included those sections that seemed to expand the type of property that could be recovered or the people from whom the property could be recovered. I did not include provisions that did not make any substantive change to current law (for example, in current law s. 46.27 (7g), a claim may already be filed against the estate of a deceased surviving spouse, so I did not include s. 46.27 (7g) (c) 1.). You may want to include more or different sections. Would you prefer to include *all* of the sections in this draft in the delayed Effective Date provision?

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)

**Kahler, Pam**

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**From:** Iwata, Yuko - DOA <Yuko.Iwata@wisconsin.gov>  
**Sent:** Wednesday, January 30, 2013 4:28 PM  
**To:** Kahler, Pam  
**Cc:** Gauger, Michelle C - DOA  
**Subject:** FW: Estate Recovery Draft  
**Attachments:** 13-0617\_P3-DHS Comments 013013.docx

Hi Pam,

Please find attached DHS' suggestions regarding your last estate recovery draft. If you have any questions, please let me know.

Thanks,

**Yuko Iwata**  
Executive Policy and Budget Analyst  
Division of Executive Budget and Finance  
Department of Administration  
(608) 267 – 7980

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**From:** Rosen, Lara K - DHS  
**Sent:** Wednesday, January 30, 2013 4:26 PM  
**To:** Iwata, Yuko - DOA  
**Cc:** Cunningham, Curtis J - DHS; Megna, Richard H - DHS; Forsaith, Andrew C - DHS; Wasilewski, Daniel L - DHS; Emmerton, Kathleen M - DHS; Garza, Jesus G - DHS; Gauger, Michelle C - DOA  
**Subject:** RE: Estate Recovery Draft

Hi Yuko,

Attached you will find a Word version of the latest draft of the estate recovery language with responses to notes, as well as several comments/proposed changes in tracked changes. Below are our responses to the drafter's note. Please forward to LRB, and let me know if you have any questions.

Thanks,  
Lara

- 1. Property of the decedent vs. property of the recipient.** The language is okay as drafted, though we did edit the language in the draft such that the property of the nonrecipient/nonclient spouse is expanded to include all personal as well as real property in s. 46.27 (7g) (a) 5. b., 49.496 (1) (cm) 2., 49.682 (1) (e) 2., and 49.849 (d) 2.
- 2. Decedent surviving spouse remarried.** We're okay with the language as drafted. Our opinion is that if the spouse remarries, it creates a new relationship/contract and the nonrecipient surviving spouse has obligations of support with the new spouse. The same would hold true with a minor or disabled child.
- 3. Effective dates.** We want all sections in this draft in the delayed Effective Date provision, provided that current law remains in effect until the new provisions take effect. We don't want to create a gap during which we can't recover for the services we are currently recovering. This concern is also articulated in comment 26 in the attached document.

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**From:** Iwata, Yuko - DOA  
**Sent:** Friday, January 25, 2013 1:22 PM  
**To:** Rosen, Lara K - DHS  
**Cc:** Gauger, Michelle C - DOA  
**Subject:** Estate Recovery Draft

Hi Lara,

Please find attached an updated draft and drafter's note regarding estate recovery. If you have any questions, please let me know.

Have a good weekend,

**Yuko Iwata**  
Executive Policy and Budget Analyst  
Division of Executive Budget and Finance  
Department of Administration  
(608) 267 – 7980